IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4042 OF 2006

Rajesh Shashikant Kocharekar .. Petitioner.

Vs.

Shyam Dnyaneshwar Shinde & anr. ..Respondents.

...

Mr. M.A. Patil for the Petitioner.

CORAM: DR. D.Y. CHANDRACHUD, J.

3rd July, 2006.

P.C. :

The writ of summons in the present case was served on 14th October, 2004. The written statement was not filed within a period of 30 days as required by the amended provisions of the Code of Civil Procedure. The written statement was not filed within a period of 90 days as well. Undoubtedly the Court has in an exceptional case the power to condone the delay since the provision is of a procedural nature. However, the only averment which was made in the application for condonation was as follows:

> "That thereafter I could not approach to the Advocate due to my financial weak position & ill health therefore some delay (65 days) has been taken place."

Absolutely no details were indicated. Before the revisional Court it was argued that the Petitioner had suffered from jaundice. However, the medical certificate was for the period from 10th November, 2004 till 31st January, 2005. The application for filing a written statement was made on 22nd March, 2005. No exceptional case is therefore made out. The Petition is accordingly dismissed.